

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Northern Lights Inc.

OBJECTOR: Northern Lights Inc.

CASE 76D-0239-R-2023
76D 5165-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Statement of the case

Claimant, Northern Lights Inc., objected to the flow rate and surface area of the reservoir identified by power generation claim 76D 5165-00.

The claim also received issue remarks concerning period of diversion and volume. Issue remarks often result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims.

Montana law requires the Water Court to resolve issue remarks and objections.

Issues

1. Is Northern Lights Inc.'s objection to claim 76D 5165-00 resolved?
2. Are the issue remarks on claim 76D 5165-00 resolved?

Findings of fact

1. The historically accurate flow rate for power generation claim 76D 5165-00 is 540.00 CFS.
2. The historically accurate surface area of the reservoir for power generation claim 76D 5165-00 is 30.00 acres. The historically accurate capacity of the reservoir is 420.00 AF.
3. The Preliminary Decree abstract for power generation claim 76D 5165-00 identifies the historically accurate period of diversion – year-round.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a "modest

standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. If the settlement agreement expands or enlarges an element of a claim, evidence meeting the burden of proof must be provided. If the evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

6. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

7. A clerical mistake or mistake arising from omission or oversight may be corrected by the court at any time. Rule 60(a), M.R.Civ.P.

Analysis

Issue 1 – flow rate and surface area of reservoir objection

Northern Lights Inc.’s objection requested that the flow rate be restored to the amount identified by the 1984 Temporary Preliminary Decree abstract, and the surface area of the reservoir be restored to that identified by a 1983 reservoir questionnaire. Information in the claim file provided in 1983 by then claimant St. Regis Paper Company supports the historical accuracy of the 540.00 CFS flow rate identified by the 1984

Preliminary Decree abstract and the reservoir's 30.00-acre surface area. The modified surface area results in an increase in the capacity of the reservoir to 420.00 AF.¹

Conclusions of law

The record before the court justifies the modifications to nonconsumptive power generation claim 76D 5165-00 and resolves Northern Lights Inc.'s objection to the claim.

Issue 2 – issue remark resolution

Claim 76D 5165-00 appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 627 TIMES THE CAPACITY OF THE RESERVOIR.

The period of diversion issue remark provided the opportunity for claimant and other water users to object to the claim. No one, including Northern Lights Inc., objected to the period of diversion identified by the issue remark on claim 76D 5165-00.

The volume issue remark does not raise an issue requiring resolution. The very nature of power generation is to use water nonconsumptively. There is no excessive volume issue to resolve.

Conclusions of law

The period of diversion issue remark appearing on the claim served its notice purpose.

The volume issue remark does not raise an issue requiring resolution.

Recommendations

Power generation claim 76D 5165-00 should be modified as follows to accurately reflect historical use.

¹ See Ch. VI.H.2.d. 2013 DNRC Claims Examination Manual. Reservoir Capacity = Surface Acres x Depth x 0.4

FLOW RATE: 540.00 CFS

~~A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS
ONSTREAM RESERVOIR.~~

Reservoir: ONSTREAM

Surface Area:	17.80 ACRES	30.00 ACRES
Capacity:	249.00 AF	420.00 AF

The issue remarks should be removed from the abstract of claim 76D 5165-00.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

Calli J. Michaels
Michaels Law, PLLC
PO Box 1388
Dillon, MT 59725
(406) 660-4265
cmichaels@mlawmt.com

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 5165-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: NORTHERN LIGHTS INC
PO BOX 269
SAGLE, ID 83860 0269

Priority Date: DECEMBER 12, 1911

Type of Historical Right: FILED

Purpose (use): POWER GENERATION

Flow Rate: 540.00 CFS

Volume: 390,550.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: LAKE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESENW	19	31N	33W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESENW	19	31N	33W	LINCOLN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 42.30 FEET

Depth: 35.00 FEET

Surface Area: 30.00 ACRES

Capacity: 420.00 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSESW	18	31N	33W	LINCOLN